# EXHIBIT 4

Case 4:24-cv-00005 Document 2-4 Filed on 01/02/24 in TXSD Page 2 of 28 11/17/2023 11:03 AM

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Marilyn Burgess - District Clerk Harris County Envelope No. 81754630

By: Patricia Jones Filed: 11/17/2023 9:32 AM

CAUSE NO		
HALLIBURTON ENERGY SERVICES, INC.,	§ §	IN THE DISTRICT COURT
Plaintiff,	§ §	
VS.	8 8 8	JUDICIAL DISTRICT
OPEN MOUNTAIN ENERGY LLC,	8 8 8	
Defendant.	\$ \$	HARRIS COUNTY, TEXAS

## PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE DISTRICT JUDGE:

HALLIBURTON ENERGY SERVICES, INC., a Delaware corporation ("Plaintiff" or "Halliburton"), Plaintiff, files this its *Plaintiff's Original Petition* complaining of **OPEN**MOUNTAIN ENERGY LLC, a Delaware limited liability company which is registered as a foreign entity in Texas ("Open Mountain" or the "Defendant"), and would respectfully show to the Court the following.

## I. DISCOVERY AND SCOPE OF RELIEF

- 1. Halliburton proposes that discovery proceed according to Level 2. See Rules 169 and 190, Texas Rules of Civil Procedure.
- 2. Pursuant to Rule 47(c) of the Texas Rules of Civil Procedure, Halliburton discloses that Halliburton seeks only monetary relief of under \$2,000,000.00 and a request for judgment for all the other relief to which Halliburton may be entitled. Halliburton reserves the right to amend this disclosure as may be applicable through discovery.

## **II. INTRODUCTION**

3. This is a suit on sworn account, and an action for breach of contract and/or quantum meruit, to obtain a judgment against Open Mountain for several unpaid invoices.

## III. JURISDICTION AND VENUE

- 4. Jurisdiction is proper in this Court because the damages sought by Halliburton exceed this Court's minimum jurisdictional limits and are within the maximum jurisdictional limits of this Court.
- 5. Each Work Order underlying each unpaid invoice specifies Harris County as the venue for any disputes.

# **IV. PARTIES**

- 6. Plaintiff, Halliburton, may be served in this proceeding by and through the undersigned counsel.
- 7. Defendant, **OPEN MOUNTAIN ENERGY LLC**, is a Delaware limited liability corporation with a principal office and principal place of business in Lehi, Utah. Defendant may be served by and through its registered agent and/or controlling person(s) as set forth below.

## PRIMARY ADDRESS FOR SERVICE:

Open Mountain Energy, LLC
Attn. Cogency Global Inc. – Reg Agent
850 New Burton Road, Suite 201
Dover, DE 19904

## **ALTERNATE ADDRESS FOR SERVICE:**

Open Mountain Energy LLC 3451 N Triumph Blvd, Ste. 201 Lehi, UT 84043,4991

## **ALTERNATE ADDRESS FOR SERVICE:**

Open Mountain Energy, LLC Attn: R. Rawson – Reg Agent 245 E Liberty St, Ste 520 Reno, NV 89501

## **ALTERNATE ADDRESS FOR SERVICE:**

Open Mountain Energy LLC 1725 Oak Crest Dr. Orem UT 84097

## V. FACTUAL BACKGROUND

8. Halliburton, by and through Halliburton and/or its wholly owned affiliated companies, at the special instance and request of Open Mountain and pursuant to one or more Work Order contracts, did furnish and deliver to Open Mountain certain goods, equipment, labor, services, materials, and/or supplies, as shown on the sworn account summary and interest

calculation attached hereto as **Exhibit H001** and **Exhibit H002**, and the invoices attached hereto as **Exhibit H003**, and each incorporated by reference herein.

- 9. This account represents a transaction of which a systematic record has been kept.
- 10. Halliburton provided and sold goods, equipment, labor, services, materials, and/or supplies at the request of Open Mountain in connection with the development of one or more mineral leasehold(s).
- 11. Halliburton has rendered the aforementioned services and provided the aforementioned products in compliance with the agreements between the parties and has sought payment for same.
- Open Mountain accepted each item and agreed and promised to pay Halliburton the sum of at least the original principal amount of \$963,304.61 plus interest at the maximum rate allowed by law which is the rate of 18.00% per annum (collectively, the "Indebtedness"), which was the reasonable, usual, and customary price of the goods, equipment, labor, services, materials, and/or supplies at the time and in the place of this transaction.
  - 13. The Indebtedness remains unpaid.
- 14. According to a tabulation appearing in Exhibit H002, the remaining principal amount of the Indebtedness through November 15, 2023 of not less than \$963,304.61 remains due and owing, and the total accrued interest though November 15, 2023 is in the amount of at least \$108,819.88. Interest continues to accrue on the Indebtedness. <sup>1</sup>
- 15. Accordingly, all conditions precedent, if any, necessary for Halliburton's enforcement of the agreements, or to Halliburton's recovery from Open Mountain's breach of the terms of the agreements, have been performed or have occurred.

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<sup>&</sup>lt;sup>1</sup> In no event does Halliburton charge or seek to charge interest in excess of the maximum permitted by law.

- Open Mountain has failed and refused and continues to fail and refuse to pay to Halliburton the amounts necessary to satisfy the Indebtedness, plus interest at the maximum rate allowed by law, despite repeated demands.
  - 17. The total Indebtedness owed to Halliburton is just and unsatisfied.
- 18. Halliburton has satisfied all conditions precedent necessary to presecute this action and to seek the judgment and other remedies sought herein.

## VI. CAUSES OF ACTION

- 19. To the extent necessary, each of the claims set forth below are pleaded in the alternative.
- 20. The foregoing paragraphs of this pleading are referenced and fully incorporated into each cause of action asserted below as though fully set forth therein.

## A. Count 1 — Suit on sworn account.

- 21. The Affidavit and Verification of Halliburton in support of the sworn account is attached as **Exhibit H001**.
- 22. In the regular course of business, Halliburton provided and sold to Open Mountain goods, equipment, labor, services, materials, and/or supplies at the request of Open Mountain in connection with the development of one or more energy production facilities.
- 23. In consideration for the goods, equipment, labor, services, materials, and/or supplies sold, on which a systematic record has been kept, Open Mountain promised and became bound and liable to pay Halliburton the prices charged for the goods in the total amount, with interest as of November 15, 2023, of not less than \$1,072,124.49.
- 24. Despite demands by Halliburton upon Open Mountain for payment, Open Mountain has refused and failed to pay the account.

25. Accordingly, Halliburton respectfully requests that the Court enter judgment against Open Mountain, for breach of a sworn account, in an amount of not less than the current amount of the Indebtedness plus pre-judgment interests, costs and other additions allowed under each Work Order and/or each resulting Invoice, attorneys' fees, expenses, and costs of court pre-judgment and post-judgment, and post-judgment interest, to the extent permitted by applicable law.

## B. Count 2 — Breach of contract.

- 26. One or more events of default have occurred under the Work Orders and/or the resulting Invoices with respect to Open Mountain.
- 27. Specifically, but without limitation, Open Mountain has failed and refused to satisfy the charges due and owing under each completed Work Order and/or each resulting Invoice.
- 28. Open Mountain has breached each Work Orders and/or each resulting Invoice, and each such breach has caused Halliburton to suffer damages in the at least the current amount of the Indebtedness plus interest that has accrued in accordance with each Work Orders and/or each resulting Invoice.
- 29. The remaining amount of the Indebtedness has not been reduced, and with interest and other charges continuing to accrue in accordance with each Work Order and/or each resulting Invoice and/or applicable law through and including the present and through and including the time of judgment entered in this action.
- 30. Accordingly, Halliburton respectfully requests that the Court enter judgment against Open Mountain, for breach of contract, in an amount of not less than the current amount of the Indebtedness plus pre-judgment interests, costs and other additions allowed under each Work Order and/or each resulting Invoice, attorneys' fees, expenses, and costs of court pre-

judgment and post-judgment, and post-judgment interest, to the extent permitted by applicable law.

## C. Count 3 — Quantum meruit.

- 31. Alternatively, Halliburton is entitled to recover from Open Mountain on the basis of the doctrine of quantum meruit.
- 32. Open Mountain received labor and/or materials from Halliburton in at least the amount of the Indebtedness referenced and described above and in the attached exhibits.
  - 33. Open Mountain accordingly benefited from such labor and/or materials.
- 34. Accordingly, Halliburton respectfully requests that the Court enter judgment against Open Mountain for quantum meruit, in an amount of not less than the current amount of the Indebtedness plus pre-judgment interests, costs and other additions allowed under each Work Order and/or each resulting Invoice, attorneys' fees, expenses, and costs of court pre-judgment and post-judgment, and post-judgment interest, to the extent permitted by applicable law.

# D. Count 4 — Unjust enrichment,

- 35. Alternatively, Halliburton is entitled to recover from Open Mountain on the basis of the doctrine of unjust enrichment.
- 36. Open Mountain received labor and/or materials from Halliburton in at least the amount of the Indebtedness referenced and described above.
- 37. Open Mountain benefited from such labor and/or materials and thus have been enriched by such value provided.
- 38. Accordingly, Halliburton respectfully requests that the Court enter judgment against Open Mountain for unjust enrichment, in an amount of not less than the current amount of the Indebtedness plus pre-judgment interests, costs and other additions allowed under each Work

Order and/or each resulting Invoice, attorneys' fees, expenses, and costs of court pre-judgment and post-judgment, and post-judgment interest, to the extent permitted by applicable law.

- E. Count 5 Attorneys' fees, attorneys' expenses, and costs of court, prejudgment and post-judgment,
- 39. Halliburton retained the law firm of Weycer, Kaplan, Pulaski & Zuber, P.C. to represent Halliburton in connection with its claims against Open Mountain, and has agreed to pay for such reasonable and necessary services.
- 40. In addition to any of the foregoing relief sought by stalliburton in this matter, Halliburton is entitled to and seeks to recover from Open Mountain all reasonable and necessary attorneys' fees that Halliburton incurs in bringing, prosecuting, and/or defending any aspect of this suit, and for all post-judgment attorneys' fees in connection with enforcing a judgment and for all appeals and/or all petitions for review of any and all matters arising in this suit against Open Mountain, to the fullest extent permitted by each Work Order and/or each resulting Invoice and by law, including but not limited to the remedies set forth in Chapters 38 and 41 of the Texas Civil Practice and Remedies Code, and/or other applicable law.
- 41. Halliburton also is entitled to and is seeking to recover all costs of court incurred to collect the Indebtedness as well as pre-judgment and post-judgment interest at the maximum rate as permitted by law.

## VII. CONDITIONS PRECEDENT

42. An conditions precedent to Halliburton's right to the relief sought herein have been performed on have occurred.

## VIII. CONCUSION AND PRAYER

WHEREFORE, Halliburton Energy Services, Inc., a Delaware corporation, Plaintiff, respectfully requests that citation be issued for Open Mountain Energy LLC, a Delaware limited

liability company, Defendant, to answer and appear herein, and that the Court award judgment in favor of Halliburton against Open Mountain for:

- (a) judgment in at least the amount of \$1,072,124.49 (as of November 15, 2023), plus interest (or otherwise in an amount within the maximum jurisdictional limits of the Court);
- (b) prejudgment attorneys' fees and expenses, and attorneys' fees and expenses incurred in any appeal or petition for review as pleaded hereinabove.
  - (c) costs of court;
- (d) pre-judgment interest through and including the date of judgment on all of the foregoing;
  - (e) post-judgment interest after the date of judgment on all of the foregoing;
- (f) post-judgment attorneys' fees and expenses and costs of court as they may accumulate, including but not limited to attorneys' fees and expenses and costs of court for enforcing and collecting the judgment; and
  - (g) all writs and processes necessary to enforce the judgment.

Plaintiff respectfully requests such other and further relief to which Plaintiff is entitled at law or equity.

Dated: November 17, 2023 Respectfully submitted:

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: /s/ Jeff Carruth

JEFF CARRUTH State Bar No. 24001846

24 Greenway Plaza, Suite 2500 Houston, TX 77046 Phone: (713) 341-1158 Facsimile: (866) 666-5322 jcarruth@wkpz.com

ATTORNEYS FOR PLAINTIFF, HALLIBURTON ENERGY SERVICES, INC.

# **VERIFICATION / AFFIDAVIT ON SWORN ACCOUNT**

THE STATE OF TEXAS	§
	§
COUNTY OF HARRIS	§

BEFORE ME, the undersigned authority, on this day personally appeared Daniel De La Garza, Treasury Analyst of Halliburton Energy Services, Inc., a Delaware corporation, who swore on oath that the following facts are true:

"My name is Daniel De La Garza. I am a Treasury Analyst of Plaintiff, Halliburton Energy Services, Inc., a Delaware corporation. ("Halliburton" or the "Plaintiff"). I am qualified and authorized in all respects to make this Affidavit.

The claim, as stated in the above and foregoing Petition, is within my personal knowledge, just and true, and all just and lawful offsets, claims, and payments have been allowed.

Plaintiff furnished and delivered certain goods, equipment, labor, services, materials and/or supplies to Defendant, OPEN MOUNTAIN ENERGY LLC.

Defendant, OPEN MOUNTAIN ENERGY LDC, has failed to submit payment in full for the goods, equipment, labor, services, materials and/or supplies furnished and reflected in the attached statement of account and/or invoices.

A true and correct schedule of the invoices due and owing to Plaintiff through April 28, 2023, the date of the last invoice issued, with the interest calculation through November 15, 2023, is attached hereto as **Exhibit H002**.

A true and correct copy of each underlying invoice is attached hereto as **Exhibit H003** and incorporated by reference herein.

Said claim, as stated above and as shown in the attached statement of account, is still due and owing to Plaintiff in the original principal amount of not less than \$963,304.61.

As of November 15, 2023, interest in at least the amount of \$108,819.88 had accrued on the unpaid claim and also remains unpaid. 1

{continued on following sheet}

<sup>&</sup>lt;sup>1</sup> In no event does Halliburton charge or seek to charge interest in excess of the maximum permitted by law.

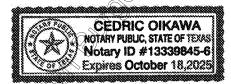
Further affiant said not."

Daniel De La Garza Treasury Analyst

Halliburton Energy Services, Inc.

SUBSCRIBED AND SWORN TO BEFORE ME, by Daniel De La Garza, Treasury Analyst, Halliburton Energy Services, Inc., a Delaware Corporation, on this \_\_\_\_\_day of November, 2023.

NOTARY PUBLIC, STATE OF TEXAS



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365-Day Interest Worksheet Open Mountain Energy												
invoice ##	Job End Date	INVOICE DATE	Starting	Þ	3 per	368	3/365	Start	End	##days	Fotal (	30tai
			invoice	invoice	ละธนก			(Due Date)	. ČŠ			
			Amount	Open Amount								
9507226097	32/10/2022	12/26/2022	307,763.09	307,763.69	0.35	363.00	0.0004931507	3/35/2023	12/2023	304.0C	46,139.17	353,902.26
9507276739	1/16/2023	1/23/2023	65,319.33	55,339.33	0.18	365.00	0.0004531507	2/12/2023	X1/15/2023	276.00	8,895,59	74,209.92
9507302378	1/31/2023	1/31/2023	33,846.09	33,846.69	8.38	363.00	0.0004933507	2/20/2023	11/15/2023	268.80	4,473.25	38,319.34
9507361676	2/25/2023	2/28/2023	160,933.51	150,933,91	0.18	365.80	6.0604531567	3/30/2623	11/15/2023	240.00	19,647,52	179,981.43
9507477715	3/29/2023	4/28/2023	34,602.79	54,652.79	8.38	363.00	0.0004933507	(5)/25/2023	11/15/2023	181.00	4,873.36	59,476.65
9567477738	3/31/2023	4/28/2023	22,229.88	22,225.88	6.18	365.80	0.0004531507	\$48/2623	11/15/2023	381.00	3,984,25	24,214.13
9507541079	3/11/2023	5/30/2023	318,609,52	338,669.52	8.18	365.00	0.9004933507	Digy 19/2023	11/15/2023	149.00	23,413.25	342,020.77
TOTAL.			963,304.61	963,304.61			(A)				108,819.88	1,072,124.49

Page 1 plaintif's petition Open Mountain 001 4895-8763-1497 x 8-2603 (S) / 4885-4982-0049, s

